

Comment Summary and Responses
Colorado Lagoon Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), Sediment Toxicity, Polycyclic Aromatic Hydrocarbons (PAHs), and Metals
TMDL Comment Deadline: 12pm October 20, 2010

1. City of Long Beach
2. Los Angeles County Flood Control District
3. Heal the Bay

No.	Author	Comment	Response
0.1	Multiple	Many of the comments submitted in opposition to the State Board's approval of this BPA were previously submitted to the Regional Water Board and submitted verbatim to the State Board, without further explanation.	<p>Many of the individual comments submitted to the State Water Resources Control Board (State Water Board) on this matter are identical to a comment submitted to the Los Angeles Water Quality Control Board (Los Angeles Water Board) at the time the draft version of this TMDL was under consideration. As part of its consideration process, the Los Angeles Water Board provided written responses to all of the comments it received. The Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or to the related documentation in response to the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that that changes would not be made, and the response included the reason.</p> <p>Where a commenter merely repeats a comment that was originally tendered to the Los Angeles Water Board on a prior version of a BPA, but fails to disclose what quarrel, if any, the commenter has with the response provided or the action taken by the Los Angeles Water Board in response to the comment, the State</p>

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			<p>Water Board is unable to address the comment. Specifically, in those cases where the Los Angeles Water Board made changes in response to a comment, the commenter has failed to explain how the changes were allegedly inadequate. Likewise, where the Los Angeles Water Board did not make changes, the commenter has failed to explain how the response or explanation that the Los Angeles Water Board provided was allegedly inadequate, or even whether the commenter believes that the response was inadequate.</p> <p>Where a commenter has merely repeated a comment submitted before, the State Water Board cannot divine what the commenter believes has been adequately satisfied and what has not, nor can it determine the reason for any remaining dissatisfaction. State Water Board staff will review the Los Angeles Water Board's responses to ensure that they are thorough and address the specific question presented.</p>
1.1	Eric Lopez	"The City of Long beach (CLB) recognizes the impaired status of the Colorado Lagoon and the need to implement specific measures to restore its health for all applicable beneficial uses. As such, we have been working closely with the community and numerous local, state and federal agencies, including the State Coastal Conservancy, San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, Friends of	State Water Board staff disagrees with the City's statement that, "the RWQCB decided against participating in the City's planning or CEQA process, nor did they work with the CLB or any other of the partner organizations to develop any portion of their TMDL." Los Angeles Water Board staff initiated outreach to the City of Long Beach on February 5, 2008

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		<p>Colorado Lagoon, State Water Resources Control Board, Port of Long Beach, U.S. Army Corps of Engineers, U.S. National Oceanic Atmospheric Administration (NOAA), U.S. Fish and Wildlife (F&W) Service, among others, on a comprehensive restoration plan and its implementation.</p> <p>The CLB is on the verge of completing the first major part of the restoration project, which is designed to prevent the lagoon's recontamination by redirecting urban runoff into the sanitary sewer system, capturing trash before it enters the lagoon, constructing bioswales and cleaning the underground culvert that connects the lagoon to Marine Stadium. The next major phase will involve dredging the lagoon to remove the contaminated sediments that have accumulated during the past several decades.</p> <p>These restoration components and improvements were planned long ago, before the RWQCB began their work on the Basin Plan and TMDL. In fact, the Colorado Lagoon Restoration Project Environmental Impact Report (pursuant to CEQA) was certified by the Long Beach City Council a full year prior to the RWQCB's adoption of the Basin Plan Amendment. The RWQCB decided against participating in the City's planning or CEQA process, nor did they work with the CLB or any other of the partner organizations to develop any portion of their TMDL."</p>	<p>during a meeting on the Colorado Lagoon Restoration Project, and specifically discussed the Project EIR with the City and presented information to the City on the background, purpose and schedule of this TMDL. Los Angeles Water Board staff attended or hosted other meetings in the City of Long Beach on June 17, 2008 and November 19, 2008 to discuss both the Restoration Project EIR and the TMDL. On December 22, 2008, a notice of a CEQA scoping meeting was published in the Long Beach Press-Telegram and sent to Interested Parties, including a number of City staff, and on January 21, 2009, the scoping meeting was held in the City of Long Beach with City staff in attendance. At this meeting, Los Angeles Water Board staff solicited input from stakeholders on the reasonably foreseeable environmental impacts from the implementation of this TMDL, pursuant to the California Environmental Quality Act (CEQA). Additional technical meetings were also held with responsible agencies prior to the public notice of the draft TMDL to discuss possible implementation measures, requirements for compliance and implementation schedules. The Los Angeles Water Board staff sent out a Notice for Public Comment to all interested parties on July 23, 2009 with a comment deadline of September 8, 2009. The City of Long Beach is on the Interested Parties list and submitted comments, which were</p>

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			<p>responded to by Los Angeles Water Board Staff and made available to the public prior to the board hearing on October 1, 2009. In response to a number of the City's comments Los Angeles Water Board staff revised their technical documents and amendment language. Mr. Eric Lopez testified for the City of Long Beach at the Regional Board hearing stating, "[Regional Water Board staff] have been very communicative and open throughout this entire process" (AR p. 11-36).</p>
1.2	Eric Lopez	<p>"This is important because had they collaborated with the project stakeholders and participated in the planning and CEQA process, they would have better understood the site specific conditions of the Colorado Lagoon and the rationale behind each restoration component, which would have helped inform their decisions on the TMDL, especially their decision to recommend the use of NOAA's Effects Range Low (ERLs) as the water and sediment quality targets for this project. Contrary to the RWQCB's assertion, one size does not fit all. All water</p>	<p>See response to comment 1.1. The Los Angeles Water Board staff is well informed on the site specific conditions of the Colorado Lagoon and detailed their rationale for the selection of numeric targets for water, fish tissue and sediment in the Los Angeles Water Board's Final Staff Report, which was one of several documents circulated for public comment. The Los Angeles Water Board further explained their selection of Effects</p>

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		bodies are not equal. It is thus important to take careful consideration of each individual water bodies' condition and environmental setting before selecting appropriate numeric targets for water, fish tissue, and sediment."	Range Lows (ERLs) in response to the City's written comments and oral testimony before the Los Angeles Water Board.
1.3	Eric Lopez	"Did the RWQCB or SWRCB staff consult with NOAA, Coastal Commission, F&W Service, State Coastal Conservancy, or any other local, state or Federal Agency on selecting the recommended numeric targets for water, fish tissue and sediment? If so, which agencies were consulted and what was the extent of the consultation? Please provide all available documentation for the record. If not, why wasn't NOAA or other local, state or Federal Agencies consulted in developing the numeric targets? What rationale was used to determine the use of ERL's as appropriate numeric targets for Colorado Lagoon?"	<p>See response to comment 1.1. Craig Anderson from NOAA, the Department of Fish and Game, the State Lands Commission, the Department of Parks and Recreation, the Resources Agency, Robert Hoffman from the National Marine Fisheries Service, Caltrans, and U.S. EPA were all on the interested parties list and had opportunity to comment on the technical documents associated with this TMDL. The interested parties lists can be obtained from the Los Angeles Water Board's administrative record.</p> <p>The goal of the TMDL is to remove impairment and restore beneficial uses. The ERL values represent the levels below which significant adverse biological effects are not expected to occur, and therefore are the appropriate threshold for ensuring that aquatic life beneficial uses are fully supported and that impairment is eliminated. The use of ERLs as the numeric targets is consistent with previously adopted TMDLs in the Los Angeles Region, including the Calleguas Creek OC pesticides, PCBs, and Siltation TMDL, the Marina del Rey Harbor Toxic Pollutants TMDL, Ballona Creek Estuary Toxics TMDL, and the McGrath Lake PCBs, Pesticides and Sediment</p>

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			Toxicity TMDL.
1.4	Eric Lopez	“According to the RWQCB staff responses to comments on their proposed Basin Plan Amendment and TMDL, ERLs have previously been used in the Los Angeles Region, including for the Calleguas Creek OC pesticides, PCB's, and Siltation TMDL and the Marina del Rey Harbor Toxic Pollutants TMDL. Have their been any other TMDL's in the State of California where ERL's were NOT used as the numeric targets? If so, what are the names of these TMDL's, when were they adopted, and what was used as the appropriate numeric targets in lieu of the ERLs?”	Please refer to the following website to obtain a complete list of adopted TMDLs, including state adopted TMDLs and EPA established TMDLs, in the State of California. Detailed information such as the names of the TMDLs, when they were adopted, and what numeric targets were used is provided. http://www.epa.gov/region9/water/tmdl/california.html#state
1.5	Eric Lopez	“Again, the CLB acknowledges the need to improve the conditions of Colorado Lagoon. As such, the CLB has worked closely with its partners to develop an appropriate restoration plan and to begin implementing these improvements. To date, approximately \$12,000,000 has been raised or committed to this project. As stated above, dredging the Colorado Lagoon is the next major phase of the project. The CLB acknowledges the need to remove all sediment that exceeds NOAA's Effects Range Medium (ERMs) contamination levels and are considered hazardous material. There is approximately 50,000 cubic yards of sediment at the lagoon that exceed these ERM's that will be removed, treated and disposed off as part of the restoration plan. However, if ERL's are selected as the appropriate targets, an additional 22,000+ cubic yards of dredging will need to occur to achieve the ERL targets. The CLB is concerned that this additional dredging is excessive and unnecessary and would	See the second paragraph of the response to comment 1.3. Los Angeles Water Board staff agrees with the value of evaluating sediment quality using ERL thresholds along with measures of effects such as toxicity tests, benthic community analyses and/or bioaccumulation tests. Monitoring pursuant to the TMDL will include water quality, sediment quality, sediment toxicity and fish tissue sampling. The Los Angeles Water Board will consider reopening this TMDL if sufficient data are collected during implementation, monitoring or special studies to demonstrate that beneficial uses are being fully supported, consistent with the implementation approaches for human health and benthic community protection specified in the Water Quality Control Plan for Enclosed Bays and Estuaries

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		provide minimal marginal benefits as opposed to our proposal to remove and treat all sediment with contaminants that exceed ERMs and to use a numeric value in between ERLs and the Probable Effects Level to be determined after careful consultation with NOAA, F&W Service and other interested local, state and Federal Agencies.”	– Part 1 Sediment Quality. Responsible parties are required to provide multiple lines of evidence by assessing sediment toxicity, benthic community condition, sediment chemistry, and pollutant concentrations in fish tissue after the remediation actions are completed. This is acknowledged in the Basin Plan amendment language under “Implementation Plan.”
1.6	Eric Lopez	“Also, please clarify that whatever numeric target is chosen, that this is indeed a target, and that the State Water Board and Regional Water Board will work with the CLB on the appropriate delisting protocol on a timely manner.”	The Los Angeles Water Board’s basin plan amendment associated with Resolution No. R09-005 clearly indicates the numeric targets that will need to be met. The waterbody will be moved to the part of the 303d list for waterbodies being addressed by a TMDL. Once a TMDL is in place, it is unnecessary to delist. In fact, CWA section 303(d)(3) directs states to develop TMDL for non-impaired waterbodies to assure protection of beneficial uses.
2.1	Gary Hildebrand	The LACFCD Should Not Be Responsible for Meeting Waste-Load Allocations (WLAs) “The proposed TMDL inappropriately names the LACFCD as a responsible agency for meeting the TMDLs WLAs. The purpose of the TMDL is to identify discharges and assign waste load and load allocations so that the receiving water, here the Colorado Lagoon, will meet water-quality objectives. The WLAs, therefore,	State Water Board staff disagrees. Under the Federal Clean Water Act, a point source is “any discernable, confined and discrete conveyance ... from which pollutants are or may be discharged.” (33 U.S.C. § 1362(14).) Under the Clean Water Act, therefore, the fact that a point source may merely convey pollutants, and does not generate them, does

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		<p>should be allocated in a manner that will further reduction of those pollutant loads to the lagoon. Because the LACFCD does not have jurisdiction over the land areas that drain to the Colorado Lagoon, allocation of WLAs to the LACFCD does not accomplish that objective.</p> <p>As set forth in Finding No. 9 of Regional Board Resolution No. R09-005, "the Regional Board's goal in establishing the Colorado Lagoon Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), sediment toxicity, Polycyclic Aromatic Hydrocarbons (PAHs), and metals TMDL is to determine and set forth measures needed to remove the impairment of fish tissue and sediment quality due to high levels of OC pesticides, PCBs, sediment toxicity, PAHs, and metals in Colorado Lagoon." In order to reach this goal, the TMDL must assign the WLAs to the jurisdictions that have the ability to reduce the contribution of these pollutants to the lagoon. Otherwise the assignment will not result in a reduction in the contribution of these pollutants. This means that the WLAs should be allocated to those jurisdictions that are able to control the land uses, which generate these pollutants, and thus prevent the pollutants from entering the lagoon.</p> <p>These jurisdictions are the City of Long Beach (City) and California Department of Transportation (Caltrans). As recognized by the Regional Board, the Colorado Lagoon and its Watershed area are located completely within the City. The City has jurisdiction over the land areas that discharge to the lagoon. The Caltrans has</p>	<p>not absolve the point source operator of responsibility for discharges of pollutants from the point source. The TMDL clarifies that Colorado Lagoon is located completely within the jurisdictional boundaries of the City of Long Beach and land areas serviced by storm drains that currently discharge to the lagoon are under the jurisdiction of the City of Long Beach. Therefore, the WLAs to all the storm drains that currently discharge to the lagoon are assigned to the City of Long Beach. The LACFCD, however, owns and operates the Project 452 Storm Drain, which discharges to Colorado Lagoon; therefore, the LACFCD is also responsible in its capacity as owner and operator of the storm drain that is discharging to the lagoon, for achieving the WLAs assigned to the Project 452 Storm Drain. The LACFCD and the City of Long Beach are required to implement actions to prevent pollutants from entering and accumulating in Colorado Lagoon at levels above the numeric targets and associated WLAs.</p>

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		<p>jurisdiction over the State highways. These are the agencies that have control over the land uses that generate the pollutants entering the lagoon. For example, the proposed implementation action that targets "specific land uses or critical sources" (proposed TMDL, page10) includes better sediment control at construction sites and improved street cleaning, and reducing watering needs and eliminating pesticide and herbicide use at the adjoining golf course. These are all activities that must be undertaken by Long Beach or Caltrans.</p> <p>In contrast, the LACFCD functions simply as a conveyance for urban and stormwater runoff from the City and Caltrans and does not generate any of the pollutants of concern. Assigning WLAs to LACFCD does nothing to further the Regional Board's goal of reducing the contribution of these pollutants because the LACFCD cannot control their generation.</p> <p>Assigning WLAs to LACFCD when LACFCD does not have authority over the land uses generating the pollutants is also inconsistent with the Los Angeles County Municipal Storm Water Permit (M54 Permit), one of the stated means by which the TMDL will be implemented. (See proposed TMDL, Table 7-30.1 at page 9). The MS4 Permit provides that each permittee "is required to comply with the requirements of this Order applicable to discharges <i>within its boundaries</i>. . . and not for the implementation of the provisions applicable to . . . other permittees. (Permit, Part 3.E., page 26). Part 3.D of the MS4 Permit also provides that</p>	

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		<p>LACFCD, as principal permittee, is to "coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual permittee." Furthermore, Finding G.4 of the MS4 Permit provides that the LACFCD will coordinate with other municipalities, but "each permittee is responsible only for a discharge for which it is the operator."</p> <p>The TMDL indicates that it will be implemented through NPDES permits. (Proposed TMDL, Table 7-30.1 at page 9.) Under the MS4 Permit, LACFCD is not responsible for ensuring the compliance of any individual permittee that may be discharging to its system. This would include City and Caltrans. WLAs should be assigned to those jurisdictions. In contrast, assigning WLAs to LACFCD for pollutants that are generated from those land areas will not result in a reduction of pollutants from those land areas because LACFCD has no control over them.</p> <p>For these reasons, allocation of WLAs to LACFCD is contrary to the TMDL's objectives. LACFCD should be removed from the following sections of the proposed TMDL, set forth as Attachment A to Resolution No. R09-005:</p> <ul style="list-style-type: none"> • Page 5, WLAs section • Page 9, Implementation Plan section • Page 13, Table 7-30.2, Items 1, 5 and 6" 	
2.2	Gary Hildebrand	<p>LACFCD Cannot Be Held Jointly Liable for TMDL Compliance</p> <p>"Page 9, Table 7-30.1, of the proposed TMDL provides</p>	Under both the Federal Clean Water Act, as described in the response to Comment 2.1, and the Porter-Cologne Water Quality Control

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		<p>that "The City of Long Beach, the Los Angeles County Flood Control District, and California Department of Transportation (Caltrans) are each responsible for meeting the waste-load allocations. However, to the extent their effluent discharges are commingled, they will be held jointly liable for abating the pollutants in the commingled discharge to the extent any of them are unable to disprove their own contribution of pollutants."</p> <p>As set forth above, although the City and Caltrans might have commingled discharges, the LACFCD does not. The LACFCD does not generate runoff, but simply conveys urban and stormwater runoff generated by land areas under the jurisdiction of City or Caltrans. Therefore, LACFCD should not be included in any reference to "joint liability" because there is no commingling of discharges containing pollutants generated by it.</p> <p>Moreover, there is no legal authority to assign "joint liability" in a TMDL. Under the Porter-Cologne Water Quality Act, waste-discharge requirements are issued to the person or entity that is discharging. Water Code § 13260(a)(1) provides that "any person discharging waste, or proposing to discharge waste" shall file a report of waste discharge. (Emphasis added.) A regional board issues waste-discharge requirements to "the person making or proposing the discharge." Water Code § 13263(f). (Emphasis added.) Enforcement is directed toward "any person who violates any cease</p>	<p>Act, the LACFCD is a discharger because it conveys discharges and pollutants through a point source. As such, LACFCD is appropriately assigned wasteload allocations in the TMDL. This TMDL recognizes that the interconnected nature of the municipal separate storm sewer (MS4) system, such as that in the Los Angeles region, means that it may be difficult to determine exactly where pollutants originated within the MS4. In such an integrated storm sewer system, one or more responsible agencies may cause or contribute to exceedances of the WLAs. Thus, the concept of joint liability arises when a responsible agency, such as LACFCD, conveys and ultimately discharges pollutants that may have originated further up the MS4. In these cases, MS4 dischargers, including the MS4 owner and operator, are jointly and severally liable for pollutants discharged from the common storm drain system. This joint responsibility is consistent with the law. (See, e.g., Ingram v. City of Gridley (1950) 100 Cal.App.2d 815, 818-819, 823-824 [when a party has built a conveyance system that discharges pollutants, it may be held jointly responsible for discharges].)</p> <p>Further, the Clean Water Act allows the Regional Board to issue MS4 permits based on system-wide discharges, which imposes additional roles and responsibilities upon those</p>

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		<p>and desist order, cleanup and abatement order. . . or. . . waste discharge requirement." Water Code § 13350(a) (emphasis added). See also Water Code § 13300 (the regional board may require the discharger to submit for approval a detailed time schedule of specific actions); Water Code § 13301 (cease and desist order directed at "those persons not complying with the requirements or discharge prohibitions"). A discharger is not responsible for discharges over which it has no authority or control. The Clean Water Act is similarly directed to the discharger, not others. See 33 U.S.C. §§ 1319 and 1342.</p> <p>The proposed TMDL nevertheless purports to make LACFCD jointly responsible for the actions (or inactions) of other responsible jurisdictions. LACFCD, however, has no authority to compel the City, which has the majority of the responsibility for meeting WLAs in the lagoon, to come into compliance. LACFCD cannot be, and under the governing law is not, a guarantor of compliance for other jurisdictions and it cannot be assigned such a role.</p> <p>In its response to comments, the Regional Board stated that, under the proposed TMDL, LACFCD "is not required to jointly implement any remediation actions. Responsible agencies are only responsible for areas under their management." (Response to Comment No. 2.2.) The Regional Board indicated that it had revised the proposed TMDL to reflect this addition. The Regional Board then went on to encourage the responsible agencies to collaborate or coordinate their</p>	<p>permittees. [40 C.F.R. sections 22.26(d)(2)(iv), (d)(2)(vii), (d)(2)(i)(D), and (d)(2)(iv)(B)(3).]</p> <p>The LACFCD is responsible in part for the water quality in Colorado Lagoon as discussed in the response to comment 2.1, but is not required to jointly – meaning cooperatively - implement actions to achieve the WLAs. Responsible agencies are only responsible for areas under their ownership and management and may comply with discharge requirements using any lawful means, either individually or cooperatively. Nevertheless, responsible agencies are encouraged to collaborate or coordinate their efforts to avoid duplication and reduce associated costs.</p>

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		<p>efforts to avoid duplication and reduce associated costs.</p> <p>The Regional Board, however, did not revise the proposed TMDL to reflect its response to Comment 2.2. For the reasons set forth above, there is no basis to assign joint liability to LACFCD and therefore all references to joint liability should be deleted. At a minimum, the proposed TMDL should reflect what the Regional Board stated in its response to comments. Accordingly, at a minimum, Table 7-30.1, in its Implementation Plan section, on page 9, should include as a second paragraph the Regional Board's following statement in its response to comment, "LACFCD is not required to jointly implement any remediation actions. Responsible agencies are only responsible for areas under their management." (Response to Comment No. 2.2.)</p> <p>The responsibility of each of the jurisdictions should be clearly specified in the proposed TMDL. All references to LACFCD and to joint liability should be deleted in the TMDL's Implementation Plan set forth on page 9, Table 7-30.1, and all references to the LACFCD should be removed from page 13, Table 7-30.2. Alternatively, at a minimum, the Implementation Plan section should include as a second paragraph, the Regional Board's statement of position that "LACFCD is not required to jointly implement any remediation actions" (Response to Comment No. 2.2.)</p>	
2.3	Gary Hildebrand	<p>LACFCD Should Not Be Responsible For Monitoring The proposed TMDL requires LACFCD to participate in</p>	See State Water Board response to comment 2.1.

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2.4	Gary Hildebrand	<p>The Monitoring Requirement for the Termino Avenue Drain After Its Relocation is Inappropriate “To alleviate local flooding, the LACFCD is in the process of redirecting Termino Avenue Drain away from Colorado Lagoon. When complete, the drain into the Lagoon will be removed and there will be no flows into Colorado Lagoon from Termino Drain. Dry weather flows from the Termino Avenue Drain will be diverted into the sanitary sewer system for treatment while wet weather flows will flow into Marine Stadium, located downstream of Colorado Lagoon.</p> <p>During the October 1, 2009, hearing on the TMDL, the Regional Board directed staff to modify the draft TMDL</p>	<p>The modification of the TMDL at the October 1, 2009 hearing, which added monitoring requirements for the new Termino Avenue Drain outfall to Marine Stadium, was a logical outgrowth of comments received (Los Angeles Water Board Response to Comments pp. 7-26 to 7-27). Colorado Lagoon is connected to Marine Stadium via a box culvert and, as a result of this connection, there is tidal flushing and an interchange of water between the two. Furthermore, as part of the overall restoration plan for the lagoon, the City of Long Beach is proposing to, at a minimum, clean out the box culvert and may go so far as to create an open</p>

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		<p>to require monitoring of the new Termino Avenue Drain outfall once it has been diverted into Marine Stadium. This requirement is inappropriate because Marine Stadium is a separate water-body and is not subject to the Colorado Lagoon TMDL. In addition, this was a substantive change that had not been properly noticed, and it was improper to include it without first providing the required public notice.</p> <p>Accordingly, the requirement for monitoring the Termino Avenue Drain outfall after its diversion should be removed from page 7 and 8 of Table 7-30.1.”</p>	<p>channel connecting the two waterbodies in order to further increase tidal flushing of the lagoon. The new Termino Avenue Drain outfall is located in close proximity to this connection between the lagoon and Marine Stadium, therefore, the quality of the discharge from this new outfall has the potential to influence water quality in the lagoon. To ensure that the discharge from Termino Avenue Drain does not adversely impact water quality in the lagoon, it is necessary to conduct monitoring at the outfall.</p>
2.5	Gary Hildebrand	<p>The Regional Board Failed to Apply the Sediment Quality Objectives for Enclosed Bays and Estuaries When Adopting the Proposed TMDL; The TMDL Should Be Remanded to the Regional Board and the Regional Board Ordered to Apply These Objectives</p> <p>“The Regional Board has failed to apply the Sediment Quality Objectives (SQOs) for Enclosed Bays and Estuaries adopted by the State Board on September 16, 2008 and effective August 25, 2009. The purpose of the SQOs is to have "scientifically—defensible sediment quality objectives for bays and estuaries, which can be consistently applied statewide to assess sediment quality, regulate waste discharges that can impact sediment quality, and provide the basis for appropriate remediation activities, where necessary." (State Board Resolution No. 2008-0070, paragraph 14.) The Regional Board's failure to apply the SQOs defeats this purpose.</p> <p>There is no question that the Regional Board is bound</p>	<p>Impairments in Colorado Lagoon have been identified on the basis of data on sediment chemistry, sediment toxicity and biological impairment (i.e., pollutant concentrations in fish tissue). This TMDL was developed to address this suite of related impairments and to restore the waterbody to fully protect aquatic life as well as human health related to fish consumption. As such, the TMDL is consistent with the Statewide Enclosed Bays and Estuaries Plan, Part 1-Sediment Quality, including implementation of the narrative human health objective. The State’s Sediment Quality Objectives (SQOs), as set forth in Part 1 of the Plan, do not supersede the ERL values. Part 1 of the SQOs does not establish numeric sediment quality objectives, which are a required element of a TMDL.</p>

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		<p>by the State Board's SQ0s. Water Code Section 13170 provides that, "[t]he state board may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244<i>Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict.</i>" (Emphasis added.) Water Code Section 13240 specifically provides that water quality control plans adopted by regional boards "shall conform to any state policy for water quality control."</p> <p>The State Board adopted the SQ0s as part of its Water Quality Control Plan For Enclosed Bays and Estuaries. As such, this plan supersedes any regional water quality control plan for sediment toxicity in Colorado Lagoon. Therefore, any TMDL adopted by the Regional Board for sediment toxicity in Colorado Lagoon is required to conform to this state plan.</p> <p>Nevertheless, the Regional Board failed to apply the SQ0s. The Regional Board failed to apply the SQ0s in two respects. First, the Regional Board failed to determine if Colorado Lagoon is in fact an impaired water body under the multiple line of evidence (MLOE) approach called for by the SQ0s. Second, the Regional Board failed to apply the SQ0s in adopting numeric targets and WLAs, instead using the old National Oceanic and Atmospheric Agency (NOAA) sediment quality guidelines that have been superseded by the SQ05 with respect to sediment quality in California.</p> <p>With respect to the first point, the Regional Board improperly developed the TMDL without first</p>	

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		<p>determining whether the Colorado Lagoon would still be considered an impaired water body under the SQOs. According to the proposed TMDL, the lagoon was first listed on the 1998 section 303(d) list. At that time, and until the SQOs were adopted in 2008, the listing criteria in the Los Angeles Region did not apply a MLOE approach; instead, NOAAs single line-of-evidence sediment quality guidelines were used in evaluating sediment impairments for 303(d) listing.</p> <p>The State Board, in the SQOs, recognizes that this prior approach is not reliable. In adopting the SQOs, the State Board specifically said:</p> <p>None of the individual [Lines of Evidence (LOE)] is sufficiently reliable when used alone to assess sediment quality impacts due to toxic pollutants. Within a given site, the LOEs applied to assess exposure as described in Section V.A may underestimate or overestimate the risk to benthic communities and do not indicate causality of specific chemicals. (SQOs, section V.B)</p> <p>As a result, the SQOs require the assessment of sediment quality based on three lines of evidence, sediment toxicity, benthic community condition, and sediment chemistry. SQOs, section V.A. The State Board found that, "each LOE produces specific information that, when integrated with the other LOEs, provides a more confident assessment of sediment quality relative to the narrative objective. (SQOs, section V.B.)</p>	

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		<p>The State Board further recognized that the State Board's prior section 303(d) listing policy was also inconsistent with the MLOE approach of the SQOs. The State Board specifically found that: "The State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development". (State Board Resolution No. 2008-0070, paragraph 10)</p> <p>Here, the listing of Colorado Lagoon as impaired water body was never considered based on the MLOE approach set forth in the SQOs. It is not known whether the lagoon would still be considered impaired under the SQOs. The Regional Board, therefore, should have first determined whether the lagoon would still be considered impaired before adopting the TMDL.</p> <p>In its response to comments, the Regional Board stated that "the listing was consistent with the SQOs because impairments have been identified on the basis of sediment toxicity, benthic impairment, and sediment chemistry and the TMDL was developed to address this suite of impairments". (Response to comment No. 2.3.) This is incorrect. First, benthic data has never been used for listing Colorado Lagoon. Thus, there was no analysis of benthic impairment. Second, the past sediment quality evaluation has never used SQOs triad approach of integrating the three lines of evidence. The SQO requires integrating the three lines of evidence using the methodology set forth in the SQO, (see Attachment B to the SQO), rather than considering each</p>	

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		<p>of the lines of evidence separately as the Regional Board purported to do here.</p> <p>To the extent the Regional Board relies on the consent decree between the United States Environmental Protection Agency (EPA) and Heal the Bay as a reason for adopting this TMDL now (see Resolution No. R09-005, paragraph 3), such reliance is misplaced. The consent decree does not bind the Regional Board and does not obligate it to take any action. The consent decree certainly does not obligate the Regional Board to act contrary to good science. Moreover, according to the Regional Board, a TMDL for the constituents at issue in the lagoon does not have to be adopted by EPA until March 2012 (Resolution No. R09-005, paragraph 3). The Regional Board therefore has ample time to determine if the lagoon is impaired applying the SQOs and, if necessary, adopt a TMDL.</p> <p>The Regional Board also failed to apply the SQOs approach in adopting the numeric targets and WLAs. Instead, the Regional Board used the old NOAA sediment quality guidelines in setting targets and WLAs. As described in Long et al. (1995), the NOAA guidelines and objectives were developed based on a single-line-of evidence sediment chemistry data, and they were intended to be used as a screening tool for identifying and prioritizing the greatest biological risk areas. They were never intended to be used as numeric targets for TMDLs and there is no scientific basis for using them in this manner. The use of NOAA's effects-range-low (ERL) numeric targets for individual pollutants as a measure of toxicity in sediments is unsupported by the</p>	

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		<p>scientific literature, as several studies (e.g., Chapman et al., 2001; Bay et al., 2007) have noted the lack of association between the ERL values and impacts in sediments. The characterization of sediment toxicity is more complex than can be discerned using the ERL single numeric target for individual pollutants. The fact that a chemical in sediment exceeds the ERL value neither justifies impairment nor establishes the causes for the impairment. Indeed, as noted above, NOAA specifically stated that its guidelines "are not intended as cleanup or remediation targets, nor as discharge attainment targets." [<i>Sediment Quality Guidelines Developed for the National Status and Trends Program</i> (NOAA, 1999), page 1.]</p> <p>In response to the LACFCD's comment on this issue, the Regional Board stated that "the State's SQOs, as set forth in Part 1 of the Plan, do not supersede the ERL values". This is not correct. The State Board clearly stated that it intended to adopt "scientifically-defensible sediment quality objectives . . . which can be consistently applied statewide to assess sediment quality regulate waste discharges that can impact sediment quality, and provide the basis for appropriate remediation activities." (State Board Resolution No. 2008-0070, paragraph 14.) To that end, the State Board recommended "<i>that the Water Boards develop TMDL allocations using the methodology described herein, wherever possible.</i>" (SQOs, page 14.) The State Board thus clearly indicated that the regional boards statewide should use the SQOs wherever possible. The Regional Board did not provide a justification for not</p>	

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		<p>following that approach.</p> <p>As noted, the Regional Board was required to follow the SQOs. (Water Code Section 13170 and 13240). The Regional Board did not do so here.</p> <p>Accordingly, The State Water Board should remand the TMDL to the Regional Board to do the following:</p> <ul style="list-style-type: none"> • Using the State's SQO MLOE approach, examine whether sediment impairment in Colorado Lagoon is justified; • If impairment is justified based on SQO, identify water quality constituents that are responsible for the impairment; and • Apply SQOs to set the TMDL targets and WLAs for the identified responsible constituents and to evaluate TMDL compliance.” 	
2.6	Gary Hildebrand	<p>There is Insufficient Time to Provide in the TMDL for Achieving Final WLAs</p> <p>“The proposed TMDL does not provide adequate time for the responsible jurisdictions to attain the final WLAs. The TMDL calls for attainment of the WLAs in 7 years after the effective date of the TMDL. There is no evidence in the record to support this 7 year deadline. Based on experience with previous TMDLs, it is not possible to develop plans, implement actions, and achieve WLAs in seven-years. The draft TMDL provides no evidence as to how the responsible agencies are to meet the seven-year compliance schedule. There should be sufficient time for the responsible agencies to conduct the necessary monitoring and research needed during the course of implementation of the TMDL. Collaboration and integration with other adjacent</p>	<p>State Water Board staff disagrees. Los Angeles Water Board staff has worked closely with the City of Long Beach and the County of Los Angeles Department of Public Works’ staff to the LACFCD, to develop a reasonable implementation schedule that provides sufficient time for implementing proposed remedial actions, conducting monitoring, and complying with the final allocations. The Regional Water Board concluded that a 7-year implementation schedule was reasonable after considering the small size of the lagoon, the limited number of major storm drains discharging to the lagoon, and the few responsible agencies along with the fact that planning, design and environmental</p>

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		<p>regional water resources management programs may also be necessary.</p> <p>In response to the LACFCD's comment on this issue, the Regional Board stated that "the planning, design and environmental certifications for several key remedial." actions is already complete ... that a 7-year implementation schedule is reasonable. (Response to comment No. 2.8) The Regional Board's response does not identify which actions are being referred to, and whether those alone will be sufficient to meet the WLAs. As noted, there is no evidence in the record as to which actions can be completed within 7 years, the basis for that conclusion. Significantly, the response does not state, but instead implicitly recognizes that the planning, design and environmental certifications have not been completed for all the drains at issue. For example, the "remedial actions" that the Regional Board appears to be referring to does not appear to include the Project-452 storm drain.</p> <p>Accordingly, we request that the TMDL be remanded to the Regional Board for consideration of evidence to support an appropriate time period for implementation. The LACFCD's experience in designing and contracting projects related to water quality and otherwise, which the Regional Board did not call on in adopting the 7-year period, is that the implementation schedule proposed in Table 7-30.2, item 6, of the TMDL should be no shorter than 15 years."</p>	<p>certifications for several key remedial actions are already complete.</p>
2.7	Gary Hildebrand	The WLA Section of the TMDL Should be Revised to Appropriately Reflect the Regional Board's	Los Angeles Water Board staff determined that the reduction of loadings from the 5 major

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		<p>Response to LACFCD’s Comment “The proposed TMDL specifies two different approaches for the WLAs for stormwater discharges: (i) mass-based and (ii) concentration-based, as indicated on page 5 of the TMDL. Having two different allocations for the same discharge is unreasonable and impractical, as they demand different implementation measures. In the comment to the Regional Board on this issue, the LACFCD requested that the WLAs for municipal stormwater discharges be set on the mass basis only, and that the concentration-based WLAs for stormwater discharges be removed from the WLAs Section on page 5 of the TMDL.</p> <p>The Regional Board granted the LACFCD's request on this issue, stating that "Regional Board staff finds that the reduction of loadings from storm drain systems to the lagoon would be adequately addressed through the assigned mass-based WLAs ... the Basin Plan amendment is revised to include only mass-based WLAs for ...storm drain outfalls that currently discharge to the lagoon." However, the Basin Plan Amendment was not revised as the Regional Board stated it would do in the response.</p> <p>We request that the WLA section, pages 5 and 6, of the TMDL be revised to correct this error and reflect Regional Board staffs response by removing the reference to concentration-based WLAs for stormwater discharges.”</p>	<p>storm drains to the lagoon would be adequately addressed through the assigned mass-based WLAs, which contain a 10% explicit Margin of Safety. Therefore, the Basin Plan amendment was revised to include only mass-based WLAs for the five major storm drain outfalls that currently discharge to the lagoon. Concentration-based WLAs were assigned to all other minor MS4 storm drains discharging to the lagoon.</p>
2.8	Gary Hildebrand	<p>The TMDL Schedule Should Include a Re-opener “The proposed TMDL contains many uncertainties,</p>	<p>The TMDL and staff report include language stating that, “[t]he Regional Board may revise</p>

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		<p>including uncertainties about pollutant sources, loading capacity, allocations, the appropriateness of the water quality standards, and the implementation schedules. These uncertainties stem from the lack of scientific and technical information that was available during the TMDL development.</p> <p>In response to the LACFCD's request for the TMDL schedule to include a re-opener, Regional Board staff indicated that the WLAs can be revised when additional information warrants it but failed to include new language in the TMDL to reflect this. The LACFCD requests that the TMDL specifically include a reopener in 5 years if the implementation schedule is extended past 7 years, or in 4 years if the implementation schedule continues to require achievement of WLAs in 7 years. The LACFCD further requests that the TMDL be revised to indicate that the TMDL would be revised in the future to reflect new scientific and technical information and/or new standards that may result."</p>	<p>these WLAs based on additional information developed through monitoring or special studies". Furthermore, the Regional Board has the authority and discretion to reconsider the TMDL at any time if additional information warrants it.</p>
3.1	Kirstin James	<p>"We strongly support the Draft TMDL adopted by the Los Angeles Regional Water Quality Control Board on October 1, 2009 (Resolution No. R09-005). In particular, we support the reasonable seven-year deadline for compliance and the waste load allocations ("WLAs") chosen for this TMDL. The choice of WLAs based on CTR water quality criteria for protection of human health (consumption only) are more stringent than those for the protection of aquatic life, and as a result, these objectives will appropriately protect both aquatic life and fish consumption beneficial uses. The sediment targets based on ERLs are reasonable and protective numeric</p>	<p>Comment noted.</p>

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		<p>limits. Most importantly, we strongly support the inclusion of an explicit margin of safety. We urge the State Board to retain these positive attributes of the TMDL.</p> <p>In sum, we believe the Draft TMDL is the best way to meet the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act, and thus, strongly support the proposed TMDL.”</p>	